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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/911,732	07/25/2001	Joseph Atabekov	0933-0169P	5590
2292	7590	10/28/2004	EXAMINER	
BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			LAMBERTSON, DAVID A	
			ART UNIT	PAPER NUMBER
			1636	

DATE MAILED: 10/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No. 09/911,732	Applicant(s) ATABEKOV ET AL.	
	Examiner David A. Lambertson	Art Unit 1636	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 October 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 20,36,38,41-43 and 45-48.

Claim(s) withdrawn from consideration: 19,23,24,29-31,33,34,40 and 44.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☒ Other: See Continuation Sheet


JAMES KETTER
PRIMARY EXAMINER

Continuation of 2. NOTE: Specifically, the claims have been amended to place the limitation "tobamovirus" in claims 19 and 20, wherein such limitation was not previously in these claims before prosecution on the merits was concluded with a Final Action. As such, this limitation was never considered with respect to claims 29-31, 33, 34 and 41. Thus, with respect to these claims, the amended claims would require a new search and consideration after prosecution on the merits has been closed. This is especially true with regards to these particular claims, which were withdrawn from consideration and are subject to rejoinder.

It is additionally noted that Applicant provides a Declaration under 37 CFR § 1.132 (in a reply filed after September 13, 2004) to traverse the rejections made in the Final Rejection. In accordance with 37 CFR § 41.33(d)(1), the declaration is not entered because good and sufficient reasons were not provided as to why the declaration was not presented earlier in prosecution (i.e., after the rejection was initially made). For complete details on the rules changes, please see <http://www.uspto.gov/web/offices/pac/dapp/ogsheet.html>, specifically OG CITE 1286 OG 21.

Continuation of 10. Other: It is additionally noted that the specification still lacks a sequence listing and proper identification of the sequences set forth in Figures 1B-H. It is insufficient to indicate that compliance will be met at a later date.